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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/883,797	06/18/2001	Jan G. Jaworski	07148-064002	3128

7590 10/02/2002

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EXAMINER

MCELWAIN, ELIZABETH F

ART UNIT

PAPER NUMBER

1638

DATE MAILED: 10/02/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 09/883,797	Applicant(s) JAWORSKI ET AL.
	Examiner Elizabeth McElwain	Art Unit 1638

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 18 June 2001 .

2a)  This action is **FINAL**.                    2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

4)  Claim(s) 10-13, 16, 17 and 31-40 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) \_\_\_\_\_ is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claim(s) 10-13, 16, 17, 31-40 are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)  The proposed drawing correction filed on \_\_\_\_\_ is: a)  approved b)  disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)  The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.

14)  Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a)  The translation of the foreign language provisional application has been received.

15)  Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)      4)  Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)      5)  Notice of Informal Patent Application (PTO-152)  
3)  Information Disclosure Statement(s) (PTO-1449) Paper No(s)      6)  Other: \_\_\_\_\_

The preliminary amendment filed June 18, 2001 has been entered.

Claims 1-9, 14, 15, and 18-30 are cancelled.

Claims 31-40 are newly submitted.

Claims 10-13, 16, 17 and 31-40 are pending.

5        Restriction to one of the following inventions is required under 35 U.S.C. § 121:

I.        Claims 10 and 11, drawn to a polypeptide of SEQ ID NO: 2, classified in Class 530, subclass 370, for example.

II.        Claims 10 and 12, drawn to a polypeptide of SEQ ID NO: 4, classified in Class 530, subclass 370, for example.

10        III.        Claims 10 and 13, drawn to a polypeptide of SEQ ID NO: 6, classified in Class 530, subclass 370, for example.

IV.        Claims 10 and 16, drawn to a polypeptide of SEQ ID NO: 12, classified in Class 530, subclass 370, for example.

15        V.        Claims 10 and 17, drawn to a polypeptide of SEQ ID NO: 14, classified in Class 530, subclass 370, for example.

VI.        Claim 31, drawn to a polypeptide of SEQ ID NO: 8, classified in Class 530, subclass 370, for example.

VII.        Claim 32, drawn to a polypeptide of SEQ ID NO: 10, classified in Class 530, subclass 370, for example.

20        VIII.        Claims 33-37 and 40, to the extent that the claims are drawn to a nucleic acid sequence encoding SEQ ID NO: 2, plants comprising said sequence, and a method of

modifying the levels of very long chain fatty acids in a plant by transforming the plant with said sequence, classified in Class 800, subclass 281, for example.

IX. Claims 33-37 and 40, to the extent that the claims are drawn to a nucleic acid sequence encoding SEQ ID NO: 4, plants comprising said sequence, and a method of  
5 modifying the levels of very long chain fatty acids in a plant by transforming the plant with said sequence, classified in Class 800, subclass 281, for example.

X. Claims 33-37 and 40, to the extent that the claims are drawn to a nucleic acid sequence encoding SEQ ID NO: 6, plants comprising said sequence, and a method of  
modifying the levels of very long chain fatty acids in a plant by transforming the plant with  
10 said sequence, classified in Class 800, subclass 281, for example.

XI. Claims 33-37 and 40, to the extent that the claims are drawn to a nucleic acid sequence encoding SEQ ID NO: 12, plants comprising said sequence, and a method of  
modifying the levels of very long chain fatty acids in a plant by transforming the plant with  
said sequence, classified in Class 800, subclass 281, for example.

15 XII. Claims 33-37 and 40, to the extent that the claims are drawn to a nucleic acid sequence encoding SEQ ID NO: 14, plants comprising said sequence, and a method of  
modifying the levels of very long chain fatty acids in a plant by transforming the plant with  
said sequence, classified in Class 800, subclass 281, for example.

XIII. Claim 38, drawn to a transgenic plant comprising a nucleic acid encoding the  
20 protein of SEQ ID NO: 8, classified in Class 800, subclass, 298, for example.

XIV. Claim 39, drawn to a transgenic plant comprising a nucleic acid encoding the protein of SEQ ID NO: 10, classified in Class 800, subclass, 298, for example.

The inventions are distinct, each from the other because of the following reasons:

5       Applicants are reminded that nucleotide sequences encoding different proteins are structurally distinct chemical compounds and are unrelated to one another. These sequences are thus deemed to normally constitute **independent and distinct** inventions within the meaning of 35 U.S.C. 121. Absent evidence to the contrary, each such nucleotide sequence is presumed to represent an independent and distinct invention, subject to a restriction requirement pursuant to  
10       35 U.S.C. 121 and 37 CFR 1.141 et seq.

Inventions I-XIV are each distinct products and processes of use. Each is drawn to a distinct polypeptide or to a nucleic acid coding for a distinct enzymes, wherein each differs chemically and structurally, and the method of using one does not require any of the others and the plant transformed with one does not require any of the others. The polypeptides of Groups  
15       I-VII are not required by the nucleic acids, methods and plants of Groups VIII-XIV, and do not require any of these, since the polypeptides can be made by a different method, such as by chemical synthesis or extraction. Therefore, the inventions of Groups I-XIV are capable of being separately made, independently used and the patentability one would not render either of the other obvious or unpatentable.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown for their different classification and the requirement for additional areas of search restriction for examination purposes as indicated is proper.

Applicant is advised that the response to this requirement to be complete must include  
5 an election of the invention to be examined even though the requirement be traversed.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 C.F.R. § 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a diligently-filed  
10 petition under 37 C.F.R. § 1.48(b) and by the fee required under 37 C.F.R. § 1.17(h).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elizabeth F. McElwain whose telephone number is (703) 308-1794. The examiner can normally be reached on Monday through Friday from 8:00 AM to  
15 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Amy Nelson, can be reached at (703) 306-3218. The fax phone number for this  
20 Group is (703) 308-4242. The faxing of such papers must conform with the notice published in the Official Gazette, 1096 OG 30 (November 15, 1989).

Any inquiry of a general nature or relating to the status of this application should be directed to the legal analyst, Gwendolyn Payne, whose telephone number is (703) 305-2475, or to the Group receptionist whose telephone number is (703) 308-0196.

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Elizabeth F. McElwain, Ph.D.  
October 1, 2002

*Elizabeth F. McElwain*  
ELIZABETH F. McELWAIN  
PRIMARY EXAMINER  
GROUP 1600